IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

THURSDAY, THE 21ST DECEMBER 2006 / 30TH AGRAHAYANA 1928

OP.No. 26119 of 2000(H)

PETITIONER:

THE MANAGING PARTNER,
PALAKKAD SURGICALS INDUSTRIES,
C.N.PURAM, PALAKKAD .

BY ADV. SRI.ASOK M.CHERIAN

RESPONDENTS:
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1. **INDUSTRIAL TRIBUNAL**
   PALAKKAD.

2. **C.RAVI, S/O.CHAMI,**
   CHENNATHU VEEDU, V/221,
   PUTHUR, PALAKKAD.

BY ADV. SRI.S.SANTHOSH

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 21/12/ 2006 , THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

S. SIRI JAGAN, J.

O.P. No. 26119 OF 2000 H

Dated this the 21st day of December, 2006

J U D G M E N T

The management in I.D. No.8/98 before the Industrial Tribunal, Palakkad is the petitioner herein, who challenges Ext.P4 award passed by the Tribunal in that I.D. The issue referred for adjudication was,

> "*Whether the dismissal of Sri.Ravi, Turner of Palakkad Surgical Industries is justifiable? If not, what relief he is entitled to?"*

It appears that the 2nd respondent workman has dismissed on allegations of misconduct after conducting an enquiry. The enquiry was found to be proper and valid and the findings were also endorsed by the Industrial Tribunal. However, exercising powers under section 11A of the Industrial Disputes Act, the Industrial Tribunal interfered with the punishment imposed, which was dismissal from service and directed reinstatement of the workman with continuity of service with 25% back wages. The management challenges the said order. According to the management, seriousness of the misconduct has to be viewed in the nature of the business of the management. Admittedly, the misconduct found against the petitioner was only unauthorised absence from duty from 5.5.95 onwards. The contention of the management is that the management is engaged in the business of manufacture of surgical equipments as per orders received from various

hospitals. The equipments are made to order that too for surgery after fixing the surgery itself which has to be conducted on the appointed date. Therefore, if workman like the 2nd respondent unauthorisedly absents him from duty without any notice or information, it would vitally affect the business of the management and its credibility since they would not be able to supply the equipment to the customer in time as contracted. Therefore, the counsel for the management would argue that in view of the nature of the business of the management, the misconduct committed by the workman must be viewed as serious enough to warrant the punishment of dismissal from service. The counsel for the 2nd respondent workman strenuously opposes this contention. According to him, the misconduct whether in this industry or in any other industry could be same namely, unauthorised absence. The seriousness of the same cannot be tested differently in the light of the manufacturing activity of the management, he submits. He would therefore argue supporting the award.

2. In view of the divergent attitudes of the petitioner and the 2nd respondent, this court had suggested a compromise by payment of a lump sum amount as compensation in lieu of reinstatement. However, even after taking time to deliberate on the suggestion the parties could not agree on an amount although both were willing to settle the dispute by paying a lump sum amount as compensation. Therefore, I have taken upon myself the task of fixing the amount of compensation. In the facts and circumstances of the case and taking into account all the parameters involved, I am of opinion that an amount of Rs.2,75,000/- would be a reasonable amount of compensation

in lieu of reinstatement modifying the award of the Industrial Tribunal. In the above circumstances, I modify the award directing the petitioner management to pay to the 2nd respondent workman an amount of Rs.2,75,000/- as compensation in lieu of reinstatement as ordered by the Industrial Tribunal. This shall be in full and final settlement of all claims whatsoever of the 1st respondent against the management including wages under section 17B of the Industrial Disputes Act, gratuity etc and he would not be entitled to claim any other relief under any law as a workman of the petitioner management on any count. This amount shall be paid within one month from the date of receipt of a copy of this judgment. If the petitioner does not pay the amount within the above said period, the above directions would stand cancelled and the original petition would stand dismissed upholding Ext.P4 award reinstating the 1st respondent with 25% back wages.

The writ petition is disposed of as above.

(S. SIRI JAGAN, JUDGE)

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S. SIRI JAGAN , J.

OP No.26119/00 H

J U D G M E N T

21st December, 2006